TEWKSBURY TRUST MESS

Deed Disregarded By G. A. Davis, Trustee.

Progress In Empaneling Jury For Jones Trial.

Public Works Injunction Argument — Gear Holding Jury Trial.

Objections to the final account of George A. Davis, trustee of Rita C. Tewksbury, have been filed by M. T. Simonton, guardian ad litem of Rita C. Tewksbury, which conclude with a request to the Circuit Court to refer the account to a master for adjustment. As previously reported in the Advertiser the trustee rendered his account in the form of an equity suit, which is entitled:

"George A. Davis, Trustee of Rita C. Tewksbury, vs. Rita C. Tewksbury, Lillian Tewksbury and Flora Tewksbury, minor child of Rita C. Tewksbury."

Serious irregularities in the handling of the thousands of dollars belonging to the trust are brought to the attention of the court. It would appear from the statement, indeed, that the terms of the trust deed, for carrying out which in his own way Mr. Davis asks for compensation, were completely ignored. The objections are as follows:

"First—No detailed statement of income from investment of funds in his hands as trustee during said trusteeship is shown in the account.

"Second—Vouchers covering expenditures are not in proper form.

"Third—By the terms of the trust deed the trustees were limited to the payment of the income arising from all real and personal property to Rita C. Tewksbury during her life, and upon her death to pay the income to her two children, and to invest any moneys that might come to hands of trustees in making loans on first-class securities.

"The account shows lump sum of income to be $554.77, while the sum of $2678.37 has been expended, only $1500 of which is in the nature of an investment; showing that the trustees have, without authority, expended the sum of $623.60.

"Fourth—Repetition of entry for payment for drawing deed and acknowledgments, land at Punchbowl, amounting to $15, September 27, 1900.

"Fifth—Proper statement has not been made of handling principal funds during the term of trusteeship."

trust deed of Rita C. Tewksbury was to the late Paul Neumann and George A. Davis, under date of June 9, 1900.

Davis, as surviving trustee, on March 14, 1904, filed one equity suit containing his account, and another with a statement of his doings as trustee and a prayer for discharge. Besides paying Rita C. Tewksbury sums amounting to $1438.37, he had a house erected for her, costing "about fifteen hundred dollars," on land conveyed by the trust deed. The account shows a balance of $1200 belonging to the trust, which the trustee reports as deposited in Bishop & Co's bank.

He also prays that Lillian Tewksbury, who he says "is now of full age, is a bright and intelligent young lady," may be appointed trustee in his place. Rita C. Tewksbury, whose property forms the trust, "is a woman of about forty years of age and suffers frequently from temporary fits of insanity," the trustee says, adding that she had frequently told him that when her daughter Lillian came of the age of eighteen years she would like her to accept the position of trustee.

Flora Tewksbury, the remaining one interested in the trust, "is a young child of the age of twelve years," as the trustee says.

Mr. Davis appended a form of order appointing Lillian Tewksbury and M. T. Simonton, clerk of the court, as guardians ad litem of Flora Tewksbury and Rita C. Tewksbury, respectively. Judge Robinson signed the order. Hence Mr. Simonton's authority in preferring objections to the account of Mr. Davis.

Mr. Davis paid himself, according to his account, $125 "for services in court as atty. in partition suit two days and other services in suit Cunha et al. vs. Tewksbury exceptions to master's rept. before appmt. as trustee."

The objection to the form of vouchers made by Mr. Simonton is because they consist of checks, therefore do not identify the objects of expenditure. While in the suit for discharge, the trustee says he had a house built at a cost of "about fifteen hundred dollars," the account in the other suit does not contain more than $1000. There is an item of cash $500 paid to Oahu Lumber & Building Co. on Sept. 17, 1901, "on account house, construction and materials;" another to the same concern on Feb. 8, 1902, "on order R. C. T. bal. contract price for house Punchbowl," $500, and an item of $30 for insurance on Feb. 5, 1902. There is an item of $500 paid to Mrs. Tewksbury on April 5, 1902, without mention of what it was for. It is wedged between items of dates Feb. 5, 1902, and Feb. 8, 1902, the insurance and the house "balance" items respectively. Investigation, however, shows that the odd voucher covers plumbing and other bills for the house building which would bring the cost up to about $1500. This was really the "balance" item and not the other.

Dates are mixed throughout the account, such as one of the year 1903 preceding one of 1902 in direct sequence, and an item of 1901 following items of 1902 and 1903.

Judge Robinson will give a hearing to the objections tomorrow.

SOME PROGRESS MADE.

Though Judge Robinson held court for but less than an hour yesterday afternoon, as much progress was made in empaneling a jury for the Jones murder trial as at the two sessions of Wednesday. There were only three jurors produced as new material at that. One man was passed for cause and one of those previously passed walked out under a peremptory challenge.

"Are you satisfied with the jury, gentlemen?" Judge Robinson asked after the twelfth chair had once more been filled. The question sounded like a herald of approaching success ending the tedious process. Mr. Robertson then exercised the sixth peremptory challenge on behalf of the defendant.

The prosecution has the next challenge of its three remaining, while the defense has six more at disposal.

Joseph Aea was called to fill the vacancy in the jury left from Wednesday, but was excused on motion of the prosecution for unfamiliarity with the English language.

Henry Cook was passed for cause, both sides agreeing.

Emil A. Berndt was peremptorily challenged by the defense, when James Armstrong was called only to be excused at the instance of the prosecution for opposition to capital punishment. This exhausted the special venire last issued, which yielded three men out of four named. The fourth being out of town could not be served.

Judge Robinson, being assured by Deputy Attorney General Peters that the grand jury would render its final report at 10 o'clock this morning, stated that he would issue a special venire for the jurors serving on that body immediately after their discharge. He then adjourned court until that hour. There are seventeen members now active on the grand jury.

RETRIAL OLD CASE.

Pacific Mill Co. vs. Enterprise Mill Co. came up for a new trial before Judge Gear yesterday. Arthur A. Wilder appeared for plaintiff, and Sidney M. Ballou for defendant. The following jury is trying the case: J. M. Webb, E. P. Chapin, H. P. Kaohi, John Edwards, D. Halemanu, C. P. Osborne, W. F. Erving, F. E. Blake, H. C. Carter, J. Shaw, Geo. Kalahuki and Geo. Makalema.

This trial is continued until 10 o'clock this morning. The equity case relating to the American Dry Goods Co. was continued the previous day to the same time, but the jury trial will probably have right of way. Plaintiff has rested.

THE CONTRACT INJUNCTION.

Judge De Bolt will hear argument at 9 o'clock this morning on the injunction suit of Herbert Kendall vs. C. S. Holloway, Superintendent of Public Works, and Lucas Brothers, relative to the Lahainaluna buildings contract.

NEW LAWYER LICENSED.

James Dixon Avery has been licensed by Judge De Bolt to practice law in the Territorial District Courts and before the Circuit Judges at Chambers on appeal. Since October 9, 1901, he has been secretary of the Builders and Traders' Exchange and since October 1, 1902, stenographic reporter of the United States District Court for this Territory.

MAY SPLIT THE PARTY

Iaukea Doesn't Want a Home Rule Delegate.

As a result of the confirmation of the previous action of the Home Rule committee in expelling Curtis Iaukea from the chairmanship it is probable that two native parties will be organized in Hawaii, a portion remaining with Kalauokalani and Notley in the Home Rule party, and the remainder following Iaukea, probably into the Democratic ranks.

The reason that Iaukea was thrown out of the Home Rule party was not so much that he advocated fusion with the Democrats but rather that he was opposed to the Home Rulers making a nomination for Congress this year. Iaukea is of the opinion that it would be harmful to send a Home Rule delegate to Congress, representing neither of the great national parties, and, if the Home Rulers do not wish to join in a Democratic nomination, Chairman Iaukea believes that it is best not to make a nomination at all.

A meeting of the Home Rule committee was held yesterday morning in headquarters, at which Iaukea presided as chairman, although he left before the meeting had been concluded. He intends, however, to protest to the full committee against the action taken by a small minority in removing him. Kumalae, the vice-chairman, and Notley, who was most active against Iaukea and fusion, said after the meeting yesterday that nothing had been done, but Iaukea has heard that the committee confirmed the action previously taken in his case.

"The whole trouble is this," said Col. Iaukea yesterday, "that some of the old leaders object to the stand I have taken in political matters.

"I advocated fusion or coalition with the Democratic party, and some of these men see their leadership slipping away if that is done. And what makes my attitude worse in their eyes, is that I have opposed a Home Rule nomination for delegate this year. I believe the time has come when the natives should cease to array themselves against both great parties, in their Home Rule party. I don't believe that a Home Ruler should be sent to Congress, as the representative of the Hawaiian or any other people here. It was all right to send a Home Ruler the first two elections when the natives were still in a class by themselves against the white men. But now a native party, affiliated with neither the Democratic nor Republican party, can be of no benefit to the Hawaiian people or to the Territory. If the natives wish to form one party on clearly local issues, all well and good, but when it comes to sending a delegate to Congress, he should be either a Democrat or a Republican. Flocking by himself a Home Ruler can do nothing, he must belong to one of the national parties to accomplish any good for the Islands in Congress. I know some of the natives don't like my ideas, but it is something which must come sooner or later, and the earlier affiliation takes place with the Democrats or with the Republican party the better it will be for the people of this Territory.

"I believe that the Hawaiians are beginning to see that they cannot hope to win in a party by themselves. They have been disappointed by the last two elections in seeing their party defeated, and disappointment is growing on them. It is only another step to affiliation with one or the other party, and many of the natives are already leaving the Home Rule party. Properly, the overtures cannot come from the Democratic party, and the Home Rulers must ask to be taken in. It is probable that many of them will join the Democrats, for naturally their sympathies are with that party.

"As to the action of the committee in ousting me from the chairmanship I shall appeal to the whole committee. Only sixteen or seventeen acted on the matter, and proper notice was not served. There are sixty-five members of the committee on Oahu, and it requires a vote of two-thirds of that number to act on the question of declaring an office vacant. When the whole committee meets I expect to be given a hearing and to be reinstated. The Home Rulers are getting a little dissatisfied with their present leaders and want a change. They see that they have not been so successful as formerly and hold their old leaders responsible for the failure. I don't think that Kalauokalani and Notley have nearly as much influence as they are popularly credited with having, and I doubt if either of them could be elected to office on this island."

SUIT AGAINST M'CHESNEY

H. Hackfeld & Co. have brought suit against J. M. McChesney and the First National Bank for foreclosure of mortgage held on Honolulu and Hilo property. In the complaint it is alleged that McChesney borrowed from plaintiff $7,000 for which he gave his note secured by mortgage upon two pieces of property at Waikiki and in Hilo. It is further alleged that the defendant has defaulted in interest and principal and the complainant asks leave to foreclose the mortgage and to be given a right to bid upon the property. The First National Bank is made defendant because it claims a prior right to the mortgaged property upon a judgment for $45,692 obtained in the Circuit Court. Plaintiff alleges that the claim of the bank is inferior to its own.